

Phyllis Johnson-Ball
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

EI 2410

Attn.: STB Finance Docket No. 34797
July 5, 2006

Re :New England Transrail, LLC d/b/a Wilmington & Woburn Terminal Railway -
Construction, Acquisition and Operation Exemption in Wilmington and Woburn,
Ma

Dear Ms. Johnson-Ball,

As a concerned environmentalist, I would like to comment on the New England Transrail, LLC d/b/a Wilmington & Woburn Terminal Railway - Construction, Acquisition and Operation Exemption in Wilmington and Woburn, Ma
... STB FD No 34797.

1) I question NET's preemption argument

In the decision STB Finance Docket No 34797 a decided dated of June 12, 2006, it is indicated that NET states all of proposed activities and operations at the site (including the MSW and C&D activities) would either constitute rail transportation or would be integrally related to rail transportation and therefore qualify for preemption. . .

Are there other, MASS DEP permitted solid waste facility's, not associated with rail transportation doing the same thing with permits? If there are other state licensed / permitted business's doing the same type of operation, doesn't it contradict the argument that the facility constitutes 'rail transportation or integrally related to rail operations'? Integral. . *websters dictionary . . essential to completeness. . How can this be so if there are other business's doing the same type of process with no railroad preemption?

I question what appears to be processing. . *see STB decision doc service date June 13, 2006. . . sorting, grinding, crushing, aggregating, segregating, and/or baling before being loaded into rail cars or containers for shipment.. . how this can be considered or constitute rail transportation *see footnote #1?. . How would this be integrally related to rail transportation?

2) In my opinion, this is a solid waste processing facility. It think it should be treated as such.

I am of the opinion / believe NET proposal's EA is inadequate . . a Full EIS

should be required.

It seems only logical that NET's proposed MSW and C&D activities would be a Solid Waste Management Facility under both the Massachusetts Department of Environmental Protection *see BWP SW 05,08,15,19,26,27,28,29 permit fact sheet*310 CMR 19.020 19.030 19032 as well as and DEC *see 6NYCRR Part 360 1.2 b (39) (120) The definition of both applicable regulations seem to match NET's proposal as such, as well as it may appear to require a state permit. EPA regulation also appears to indicate this would be a solid waste facility *see 40 CFR part 239

It is my understanding that the RCRA Regulations, which include a permitting process, is for a waste management program that was envisioned by Congress. Wasn't there a Congressional mandate to develop a set of set regulations to implement the law?

3) It seems that the NET proposal may impact public health and welfare*see below. How is the STB going to mitigate these issues not only with this application but other Solid Waste Facility's issues?

TITLE 42 THE PUBLIC HEALTH AND WELFARE Chapter 82 Solid Waste Disposal

42USC sec. 6901. . Congressional Findings (a)3.

.. that the continuing concentration of our population in expanding metropolitan and other urban areas has presented these communities with serious financial, management, intergovernmental, and technical problems in the disposal of solid waste resulting from industrial, commercial, domestic and other activities carried on in such areas. . .

Section 6901 (b)

1. Although land is too valuable a national resource to be needlessly polluted by discarded material, most solid waste is disposed of on land in open dumps and sanitary landfills:

2. disposal of solid waste and hazardous waste is in or on the land without careful planning and management can present a danger to human health and the environment

6. If hazardous waste management is improperly performed in the first instance, corrective action is likely to be expensive, complex and time consuming.

General Laws of Massachusetts Chapter 21H - Solid Waste Facilities

M. G. L. Chap. 21H section 1-Legislative determination and declaration of purpose

(1)There is a critical need to eliminate, mitigate and prevent the nuisances and

adverse public health effects associated with the collection, processing and disposal of solid waste from whatever source derived, including municipal, industrial, domestic, commercial and other sources or activities.

(3)The provision of such capacity is an essential public purpose, will constitute the performance of an essential public function and is necessary to the prevention and improvement of health, welfare and living conditions of the people of the commonwealth, the promotion of industry and employment and all aspects of commerce, the maintenance, protection, conservation and development of a safe water supplies, and the protection of the environment overall.

4.)The testimony of W. Douglas Buttrey, Chairman of the Surface Transportation Board House Committee on Transportation and Infrastructure Subcommittee on Railroads, Hearing on Impacts of Railroad-Owned WasteFacilities 10 a.m. on May 23, 2006. . . he appears to indicate. . . an entity is not entitled to federal preemption to the extent it is engaged in activities other than rail transportation. . . *below is cut pasted from STB web page

Both the Board and the courts have made clear, however, that, although the scope of the section 10501(b) preemption is broad, there are limits. While a literal reading of section 10501(b) would suggest that it preempts all other law, neither the Board nor the courts have interpreted the statute in that manner. Rather, where there are overlapping federal statutes, they are to be harmonized, with each statute given effect to the extent possible. This is true even for federal statutory schemes that are implemented in part by the states, such as the Clean Air Act, the Clean Water Act, and the Solid Waste Disposal Act.

Given the strength and breadth of the section 10501(b) preemption, the potential for misuse is a definite concern. Thus, both the Board and the courts have made clear that an entity is not entitled to federal preemption to the extent it is engaged in activities other than rail transportation. In some cases, solid waste and other businesses have located close to a railroad and claimed to be a rail facility exempted from state and local laws that would otherwise apply, but have been found by the Board or a court not to be entitled to the federal preemption because the operation did not actually constitute ?rail transportation? by a ?rail carrier.? In other cases, activities and operations at facilities have been found to qualify for the federal preemption, as part of the transportation conducted by a rail carrier.

5.)How are residents - the environment going to be protected? Have cumulative impacts in this area. . such as air quality, water quality. . been reviewed and addressed?

6.)I am very concerned about the STB ability to bond, enforcement, inspection, tracking and monitoring as well as oversight, vector control, safety & health

issues, air quality, water quality . . . the solid waste business. . especially when it involves any type processing. If there is a violation and no permit. . what enforcement will be in place?

7.)I feel grateful that Congress/States have recognized the problems that can / appear may have resulted from the Solid Waste industry. I find it very troubling that it appears our protection may be at risk through this possible approval of preemption from most state and local regulations under 49 U.S.C.10501(b). I question if it is/was Congress's intent of preemption clause. . . to have the protective roles/ laws that were so carefully and specifically carved out for our health - welfare regarding the solid waste industry to be displaced.

8.)I think this industry appears to have the ability to severely effect our environment, health and welfare . . We can not afford to loose any of our checks and balances. I would like to know how the STB intends on protecting us, our health , our welfare, our environment with this preemption if it is approved?

Thank you for your consideration in this matter.



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#1 No preemption where the operation does not constitute transportation by a rail carrier i. High Tech Trans, LLC v. New Jersey, 382 F.3d 295 (3d Cir. 2004); High Tech Trans, LLC- Pet. For Decl. Order-Hudson County NJ, STB Finance Docket No. 34192 (STB served Nov. 20, 2002) (both agreeing with New Jersey Dept. of Environ. Protection that there is no preemption for truck transportation of construction and demolition waste en route to transloading facility, even though a railroad ultimately uses rail cars to transport the debris)
ii. Grafton and Upton R.R. v. Town of Milford, Civ. No. 03-40291 (D. Mass. Feb. 14, 2006); Town of Milford, MA- Pet. For Decl. Order, STB Finance Docket No. 34444 (STB served Aug. 12, 2004) (no preemption for planned steel fabrication facilities that are not part of "transportation")